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10/542,677	05/10/2006	Gerard Keena	55859-2	7271
7590 Brian L. Michaelis Seyfarth Shaw LLP Suite 300 Two Seaport Lane Boston, MA 02210-2028				
EXAMINER				
POND, ROBERT M				
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3625				
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

10/542,677

**Applicant(s)**

KEENA ET AL.

**Examiner**

Robert M. Pond

**Art Unit**

3625

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 08 August 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SI/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Response to Amendment***

Applicants amended claims 18 and 20-23. All pending claims 1-23 were examined in this final office action.

### ***Response to Arguments***

Applicant's arguments filed 08 August 2008 have been fully considered but they are not persuasive. Given the Applicants did not invoke 112 6<sup>th</sup> paragraph, "means for" language added to claim 18 is given the broadest reasonable interpretation as covered by Applicants' Admissions. Use of digital cash, authenticating, verifying funds, and transferring value are admitted prior art.

The Examiner is suggesting a telephone interview for further discussion pertaining to Admissions, "means plus function" language and potential subject matter paths. Additionally, Applicants did not correct 101 non-statutory subject matter regarding claim to suppliers and distributors as structural elements of a system/apparatus claim. Amendment to 20 induced ambiguity into the claimed invention.

### **Official Notice Admitted Prior Art**

Arguments presented pertained solely to the independent claims. If applicant does not seasonably traverse the well-known statement, or official notice, during examination, then the object of the well-known statement is admitted as prior art.

In re Chevenard, 139 F.2d 71, 60 USPQ 239 (CCPA 1943). A seasonable challenge constitutes a demand for evidence made as soon as practicable during prosecution. Thus, applicant is charged with rebutting the well-known statement in the next reply after the Office action in which the well-known statement was made. To adequately traverse an official notice, an applicant must specifically point out the supposed errors in the examiner's action, stating why the noticed fact is not considered to be common knowledge or well-known in the art. See 37 CFR 1.11 I(b). See also Chevenard, 139 F.2d at 713, 60 USPQ at 241. A general allegation that the claims define a patentable invention without any reference to the examiner's assertion of official notice is inadequate. [MPEP 2144.03(c)].

***Claim Rejections - 35 USC § 101***

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

- 1. Claims 18 and 19 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.**

Applicants are claiming suppliers, distributors, and data rather than structural elements. Correction is required.

- 2. Claims 20-23 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.**

As disclosed in the instant specification, "platform" is software. As claimed, software lacks tangible embodiments in computer readable medium executed by a computer to perform the claimed functions. Correction is required.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

- 3. Claims 18 and 19 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.**

Applicants are claiming suppliers, distributors, and data rather than structural elements. Correction is required.

- 4. Claims 20-23 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.**

Claims lack structural specificity for tangible embodiment of software. Applicants amended and are claiming a computer readable medium yet structural elements pertaining to elements comprising a network. Examination was based on the assumption of claiming an embodiment in computer readable medium executed by a computer to perform the claimed functions. Correction is required.

***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

**5. Claims 1-5, 7, 8, 18, 20 and 23 are rejected under 35 USC 103(a) as being unpatentable over Applicants' Admissions.**

Applicants' Admissions as taught below:

Consumers of electronically provided goods and services can presently choose from a number of payment methods to make electronic payments to the goods supplier or service provider. Such payment methods typically involve the use of credit cards, debit cards, digital cash, electronic funds transfer or the like. 0003.

In order for a service provider or supplier of non-tangible or remotely accessed goods such as digital media, content, access to utilities to sell the goods or services on-line or over mobile communications networks, the supplier must ordinarily make use of an existing on-line or mobile retail channel in which customers are able to purchase the goods or services on-line. Customers using mobile payment services must therefore have access to a traditional payment instrument such as a credit or debit card. Accordingly, this type of electronic commerce requires an infrastructure including at least fixed line networks and Internet availability. 0004.

A supplier who intends to sell services/products over a mobile telephone network or Internet typically enters a contractual agreement with an on-line retailer or distributor. Payment terms and credit worthiness of the supplier and distributor are established and confirmed as part of the contractual arrangement. A customer who wishes to perform a traditional transaction using electronic channels of commerce such as purchasing products or services over the Internet or a mobile telephone, must typically possess a payment instrument (i.e. a credit card or debit card) suitable for presentation and verification in the traditional channel. 0005.

The customer must typically register name, address, telephone number and payment instrument identifiers (i.e. credit card number, bank account number etc.). In some transactions in which a customer is pre-registered with a distributor, the customer can make a payment by simply activating a pre-registered payment instrument. For example, if the payment instrument is a bank account, a mobile commerce application can, upon activation, access the customer's bank account and transfer the value of the service/product from the customer's bank account to the retailer/distributor's account. The retailer/distributor can then finish processing the customer's order and deliver the ordered goods or services to the customer. 0006.

Such traditional electronic channels of commerce can be expensive and therefore impractical for use by many small business and start-up businesses, for example. The expensive infrastructural requirements can present an

insurmountable barrier to market entry for many e-commerce service and/or distribution businesses. 0007.

A particular drawback of traditional electronic channels of commerce is the necessity to perform credit checks on the various components in the channel. In an extended chain of commerce, credit checks alone can present a prohibitive barrier to entry for a retailer. Another particular drawback of traditional electronic channels of commerce is necessity for the channel to build up inventory. In an extended chain of commerce, substantial inventory must be produced and supplied to the chain before sales can be made to a final customer. Still another drawback of traditional on-line channels of commerce is the inflexibility of a typical channel. For example, typical on-line channels of commerce are not easily scalable and are therefore unsuitable for developing expanded vendor networks. 0008.

Many improvements are being developed to the traditional model of electronic channels of commerce. For example, U.S. Pat. No. 6,456,984 to Demoff et al. (hereinafter "Demoff") discloses a method and system for issuing credit as payment in consumer transactions which eliminates the need for traditional credit cards and minimizes fraud and theft. Concurrent with a particular transaction, a request is made for issuance of a credit transaction number. The credit transaction number is randomly generated and made valid only for the instant transaction. The credit transaction numbers are continually recycled for subsequent requests irrespective of the customer identity. The request can be



made from a mobile communication device or personal computer using an electronic commerce program. Transactions between customers and registered or known vendors can be automatically carried out by a centralized service provider without generating the unique, temporary number, or without the need for the customer or vendor to exchange personal information. 0009.

Improved methods of point of sale distribution of pre-paid debit cards have been disclosed in U.S. Pat. No. 6,405,182 to Curevo and U.S. Pat. No. 6,169,975 to White et al., for example. Each of the improved methods heretofore known retains the infrastructural requirements that are a cost barrier to vendors and a burden to potential customers. 0010.

One known method of cash based access to electronic commerce involves the use of scratch cards wherein usage codes for services are provided on scratch cards which are sold for cash. This method is used in certain emerging markets where mobile telephone usage is increasing. However, the cost of scratch card production, distribution and security can be prohibitive particularly as the value of the top-up itself may be relatively small in relation to these fixed costs. Alternative strategies that are becoming popular in developed economies, including point of sale (POS) and asynchronous transfer mode (ATM) top-up methods, are often not practical due to absence of infrastructure or low numbers of banked subscribers. 0011.

Applicants's Admissions teach and suggest:

- Regarding claim 1. establishing a distributor's account in a mobile commerce system wherein said mobile commerce system includes a supplier's account; a supplier who intends to sell services/products over a mobile telephone network or Internet typically enters a contractual agreement with an on-line retailer or distributor. Payment terms and credit worthiness of the supplier and distributor are established and confirmed as part of the contractual arrangement. Implies supplier and retailer/distributor accounts are established. Applicants' Admissions: see 0005.
- Regarding claim 1. paying value for said goods or services from said customer to said distributor; a supplier who intends to sell services/products over a mobile telephone network or Internet typically enters a contractual agreement with an on-line retailer or distributor. Payment terms and credit worthiness of the supplier and distributor are established and confirmed as part of the contractual arrangement. A customer who wishes to perform a traditional transaction using electronic channels of commerce such as purchasing products or services over the Internet or a mobile telephone, must typically possess a payment instrument (i.e. a credit card or debit card) suitable for presentation and verification in the traditional channel. Applicants' Admissions: see 0005.
- Regarding claim 1. communicating a request for said goods or services from said distributor to a supplier using a communication device in said

mobile commerce system; a supplier who intends to sell services/products over a mobile telephone network or Internet typically enters a contractual agreement with an on-line retailer or distributor. Applicants' Admissions: see 0005. The customer must typically register name, address, telephone number and payment instrument identifiers (i.e. credit card number, bank account number etc.). In some transactions in which a customer is pre-registered with a distributor, the customer can make a payment by simply activating a pre-registered payment instrument. For example, if the payment instrument is a bank account, a mobile commerce application can, upon activation, access the customer's bank account and transfer the value of the service/product from the customer's bank account to the retailer/distributor's account. The retailer/distributor can then finish processing the customer's order and deliver the ordered goods or services to the customer. Applicants' Admissions: see 0006. Note: implies communicating a request from the distributor to a supplier using the mobile network.

- Regarding claim 1. authenticating said distributor by said mobile commerce system; Payment terms and credit worthiness of the supplier and distributor are established and confirmed as part of the contractual arrangement. Applicants' Admissions: see 0005.
- Regarding claim 1. verifying said distributors funds by said mobile commerce system; For example, if the payment instrument is a bank

account, a mobile commerce application can, upon activation, access the customer's bank account and transfer the value of the service/product from the customer's bank account to the retailer/distributor's account. The retailer/distributor can then finish processing the customer's order and deliver the ordered goods or services to the customer. Notes: retailer/distributor verifies customer funds before delivering the ordered goods. It would have been obvious to try, by one of ordinary skill in the art at time the invention was made, to also verify retailer/distributor funds using the mobile commerce system before delivering goods/service by the supplier and incorporate it into the system of Applicants' Admissions since there are a finite number of identified, predictable potential solutions to the recognized need and one of ordinary skill in the art could have pursued the known potential solutions with a reasonable expectation of success. Obviousness under 35 USC 103 in view of the Supreme Court decision *KSR International Co. vs. Teleflex Inc.*

- Regarding claim 1. transferring value for said goods or services from said distributors account to said suppliers account; For example, if the payment instrument is a bank account, a mobile commerce application can, upon activation, access the customer's bank account and transfer the value of the service/product from the customer's bank account to the retailer/distributor's account. The retailer/distributor can then finish processing the customer's order and deliver the ordered goods or services

to the customer. Notes: customer funds are transferred to retailer/distributor account before delivering the ordered goods. It would have been obvious to try, by one of ordinary skill in the art at time the invention was made, to also transfer value for the goods or services sold by the supplier to the retailer/distributor to the supplier's account and incorporate it into the system of Applicants' Admissions since there are a finite number of identified, predictable potential solutions to the recognized need and one of ordinary skill in the art could have pursued the known potential solutions with a reasonable expectation of success. Obviousness under 35 USC 103 in view of the Supreme Court decision *KSR International Co. vs. Teleflex Inc.*

- Regarding claim 1. and transferring access to said goods or services to said customer. The retailer/distributor can then finish processing the customer's order and deliver the ordered goods or services to the customer. Applicants' Admissions: see 0006.
- Regarding claim 2. communicating an order acknowledgement from said supplier to said distributor. Rejection is based on the disclosures, implied disclosures and rationale as noted above. Supplier delivers services/products to retailer/distributor for delivery to the customer. Implies an acknowledgement from supplier who provides the product ordered by the retailer/distributor.

- Regarding claim 3. communicating a transaction completed message from said distributor to said customer. Rejection is based on Applicants' Admissions and rationale as noted above. retailer/distributor and customer engage in commerce using the mobile system and consummate a purchase transaction using the mobile system and completing the purchase by delivering the products/services to the consumer. It would have been obvious to try, by one of ordinary skill in the art at time the invention was made, to communicate a transaction complete message and incorporate it into the system of Applicants' Admissions since there are a finite number of identified, predictable potential solutions to the recognized need and one of ordinary skill in the art could have pursued the known potential solutions with a reasonable expectation of success. Obviousness under 35 USC 103 in view of the Supreme Court decision *KSR International Co. vs. Teleflex Inc.*
- Regarding claims 4 and 5. wherein said access comprises a code provided to said customer which can be provided from said customer to supplier to allow said customers direct access to said services. One known method of cash based access to electronic commerce involves the use of scratch cards wherein usage codes for services are provided on scratch cards which are sold for cash. This method is used in certain emerging markets where mobile telephone usage is increasing. Applicants' Admissions: see 0011.

- Regarding claims 7 and 8. wherein said communication device is a mobile phone. Rejection is based on Applicants' Admissions and rationale as noted above. Using a mobile telephone. Applicants' Admissions. See 0005.
- Regarding claim 18. Rejection is based on the disclosures and rationale as noted above. Applicants' Admissions teach prior art using a mobile communication network to conduct business, establishing accounts and addressable over the mobile network. Applicants' Admissions: see 0006. Claim 18 is overly broad In light of Applicants' Admissions.
- Regarding claims 20 and 23. Rejection is based on the disclosures and rationale as noted above. Applicants' Admissions teach stored value card in the form of pre-paid debit cards; multiple channels (e.g. Internet and mobile network) implies different protocols. Applicants' Admissions: see at least 0005; 0007; 0008; 0010. Applicant further teaches products in digital form (e.g. content, digital media). It would have been obvious to try, by one of ordinary skill in the art at time the invention was made, to implement a digital form of a stored value card and incorporate it into the system of Applicants' Admissions since there are a finite number of identified, predictable potential solutions to the recognized need and one of ordinary skill in the art could have pursued the known potential solutions with a reasonable expectation of success. Obviousness under 35 USC

103 in view of the Supreme Court decision *KSR International Co. vs. Teleflex Inc.* Claim 20 is overly broad In light of Applicants' Admissions.

**6. Claims 6, 9 and 10 are rejected under 35 USC 103(a) as being unpatentable over Applicants' Admissions in view of Rezvani (US 6,686,838).**

Applicants' Admissions teach and suggest all the above as noted under the 103(a) rejection and teach i) acquiring services using a mobile telephone over a mobile network, ii) suppliers selling non-tangible or remotely access goods such as digital media, content, and access to utilities and iii) wherein said mobile telephone network includes said mobile commerce system. Applicants' Admissions: 0004; 0005. Although Applicants' Admissions does not mention i) direct activation of said services by said supplier and ii) the goods or services comprise airtime in a mobile telephone network, Rezvani on the other hand teaches direct activation of a cellular phone by the cellular service provider. See at least 18-35. One of ordinary skill in the art at time the invention was made would have recognized that applying the known techniques of Rezvani activating cellular service directly by the cellular service provider to provide airtime too the customer would have yielded predictable results and resulted in an improved system. It would have been recognized that applying the techniques of Official Notice to the teachings of Applicants' Admissions would have yielded predictable results because the level of ordinary skill in the art demonstrated by the references applied shows the ability to incorporate such data processing features



into similar systems. Obviousness under 35 USC 103 in view of the Supreme Court decision *KSR International Co. vs. Teleflex Inc.*

**7. Claims 11 and 12 are rejected under 35 USC 103(a) as being unpatentable over Applicants' Admissions in view of ON1 (admitted prior art Official Notice regarding old and well known in the arts).**

Applicants' Admissions teach and suggest all the above as noted under the 103(a) rejection and teach acquiring services using a mobile telephone over a mobile network and further teach suppliers selling non-tangible or remotely access goods such as digital media, content, and access to utilities. Applicants' Admissions: see 0004. The Examiner takes the position that utility services that deliver electricity to consumers are notoriously old and well known in the arts. One of ordinary skill in the art at time the invention was made would have recognized that applying the known techniques of ON1 of selling utility services (e.g. electricity) would have yielded predictable results and resulted in an improved system. It would have been recognized that applying the techniques of ON1 to the teachings of Applicants' Admissions would have yielded predictable results because the level of ordinary skill in the art demonstrated by the references applied shows the ability to incorporate such data processing features into similar systems. Obviousness under 35 USC 103 in view of the Supreme Court decision *KSR International Co. vs. Teleflex Inc.*

- 8. Claims 13, 14, 19, 21 and 22 are rejected under 35 USC 103(a) as being unpatentable over Applicants' Admissions in view of ON2 (admitted prior art, Official Notice regarding old and well known in the arts).**

Applicants' Admissions teach and suggest all the above as noted under the 103(a) rejection and teach i) a retailer/distributor representing a supplier in a sales transaction to a customer for one or more products/services (note: supplier network of distributors) and ii) payment flowing from the customer to the retailer/distributor's account. The Examiner takes the position that it is notoriously old and well known in the arts for a distributor to supply goods/services to its network of retailers (i.e. sub-network to supplier's network). Note: relationship establishes an hierarchical network. One of ordinary skill in the art at time the invention was made would have recognized that applying the known techniques of ON2 of supply network with sub-networks would have yielded predictable results and resulted in an improved system. It would have been recognized that applying the techniques of ON2 to the teachings of Applicants' Admissions would have yielded predictable results because the level of ordinary skill in the art demonstrated by the references applied shows the ability to incorporate such data processing features into similar systems. Obviousness under 35 USC 103 in view of the Supreme Court decision *KSR International Co. vs. Teleflex Inc.*

**9. Claims 15-17 are rejected under 35 USC 103(a) as being unpatentable over Applicants' Admissions in view of ON3 (admitted prior art, Official Notice regarding old and well-known in the arts).**

Applicants' Admissions teach and suggest all the above as noted under the 103(a) rejection and teach i) a retailer/distributor representing a supplier in a sales transaction to a customer for one or more products/services and ii) payment flowing from the customer to the retailer/distributor's account. The Examiner takes the position that it is notoriously old and well known in the arts for a supplier or manufacturer to pay a seller a commission fee for representing a supplier, the commission fee being a percentage of the value of the item sold or paying for bulk sales (per transaction or over a period of time) based on the aggregate value. One of ordinary skill in the art at time the invention was made would have recognized that applying the known techniques of ON3 would have yielded predictable results and resulted in an improved system. It would have been recognized that applying the techniques of ON3 to the teachings of Applicants' Admissions would have yielded predictable results because the level of ordinary skill in the art demonstrated by the references applied shows the ability to incorporate such data processing features into similar systems. Obviousness under 35 USC 103 in view of the Supreme Court decision *KSR International Co. vs. Teleflex Inc.*

***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert M. Pond whose telephone number is 571-272-6760. The examiner can normally be reached on 8:30AM-5:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Jeff Smith can be reached on 571-272-6763. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Robert M. Pond/  
Primary Examiner, Art Unit 3625  
December 08, 2008